



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 181 of 2003**

**HOTTENSIAH WANJIKU NJUGUNA ..... PLAINTIFF**

**VS.**

**REUBEN NDIRANGU KAGUNYA ..... 1<sup>ST</sup> DEFENDANT**

**SIMON MUHURA KAGUNYA ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, KIAMBU DISTRICT .. .....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff filed a suit against the defendants claiming an interest in parcel of land known as Githunguri/Kanjai/416, which she alleges was obtained by the defendants through fraudulent means.

The defendants denied the claim and specifically stated that the transfer of the land is based on a court order issued in that regard.

By an application dated 7<sup>th</sup> April 2009, the defendants moved the court to have the plaint struck out. The reasons thereof are that the plaint is scandalous, frivolous, or vexatious and that it may prejudice, embarrass and delay a fair trial of this action or otherwise is an abuse of the process of the court.

The basic ground is contained in No.4 of the said grounds which states that the acts complained of by the plaintiff in this suit were undertaken pursuant and in obedience to court orders issued by the court in Succession Cause No.44 of 1993 at Githunguri. The plaintiff has never appealed against or applied for review of the said court orders yet he participated in the said proceedings. It is those proceedings that led to the transfer of the properties herein.

It is now trite law that the plaintiff is entitled to pursue a claim in our courts even if the suit filed is weak or improbable. It is always the intention of the courts to sustain a suit rather than striking it out. The subject matter in this case is land, and I have noted and appreciate the submissions by both learned counsel. Whereas it may be true that whatever took place in respect of this parcel of land can be traced to a court order at Githunguri, which the plaintiff never challenged after its delivery, she has all the right to come to court in case she was aggrieved by the said orders.

She cannot be driven out of the seat of judgment yet her suit which is on record cannot be said to be that weak or frivolous in view of the pleadings thereof. I have also had occasion to peruse the record before me. There is on record a statement of issues dated 10<sup>th</sup> January 2007 and filed in court on 14<sup>th</sup> March 2007, signed by the then advocates for the plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendants. There are in all a total of 19 issues which have been identified as triable. Having signed those issues, the defendants appreciate the weight of the plaintiff's suit and cannot be said to turn against the same and allege that the same is frivolous.

I have come to the conclusion that there being triable issues, this suit cannot be struck out. Accordingly, this application must fail. The application is therefore dismissed with costs to the plaintiff.

Dated, signed and delivered at Nairobi this 2<sup>nd</sup> July, 2009.

**A. MBOGHOLI MSAGHA**

**JUDGE**